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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 44

Introduced by Assembly Member Blakeslee
(Coauthor: Assembly Member Harkey)
(Coauthor: Senator Benoit)

December 1, 2008

An act to amend ~~Section 5898.20~~ *Sections 5898.12, 5898.20, and 5898.22* of the Streets and Highways Code, relating to public improvements.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as amended, Blakeslee. Improvement Act of 1911: contractual assessments.

Existing law, the Improvement Act of 1911, authorizes the legislative body of any public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within the public agency, as specified, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property, as specified.

Existing law requires the legislative body to make these determinations by adopting a resolution indicating its intention to do so and requires that the resolution include specified information and directs an appropriate public agency official to prepare a prescribed report.

This bill would *declare the intent of the Legislature in regard to the total amount of assessments and taxes on a property as a result of participation in the contractual assessment program. The bill would* define the term “permanently fixed,” for purposes of financing the installation of distributed generation renewable energy sources, to include systems that are attached to specified types of real property pursuant to an electricity purchase agreement between the owner of the system and the owner of the assessed property, if the agreement satisfies prescribed criteria.

~~This bill would also require the legislative body of a public agency to establish criteria to ensure that a real property owner is guaranteed the electricity from a distributed generation renewable energy source in the event that the owner of the system files for bankruptcy, as specified. The bill would also require the legislative body of the public agency to make a finding that an electricity purchase agreement funded with a contractual assessment is structured to provide protections to the property owner in the event of a bankruptcy of the owner of the system, as specified. prescribed report to include criteria for determining the creditworthiness of a property owner, as well as safeguards to be used to limit the total annual property tax and assessments on the property.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** *Section 5898.12 of the Streets and Highways Code*
- 2 *is amended to read:*
- 3 5898.12. (a) It is the intent of the Legislature that this chapter
- 4 should be used to finance public improvements to lots or parcels
- 5 which are developed and where the costs and time delays involved
- 6 in creating an assessment district pursuant to other provisions of
- 7 this division or any other law would be prohibitively large relative
- 8 to the cost of the public improvements to be financed.
- 9 (b) It is also the intent of the Legislature that this chapter should
- 10 be used to finance the installation of distributed generation
- 11 renewable energy sources or energy efficiency improvements that

1 are permanently fixed to residential, commercial, industrial,
2 agricultural, or other real property.

3 (c) It is also the intent of the Legislature to address chronic
4 water needs throughout California by permitting voluntary
5 individual efforts to improve water efficiency. The Legislature
6 further intends that this chapter should be used to finance the
7 installation of water efficiency improvements that are permanently
8 fixed to residential, commercial, industrial, agricultural, or other
9 real property, including, but not limited to, recycled water
10 connections, synthetic turf, cisterns for stormwater recovery, and
11 permeable pavement.

12 (d) It is also the intent of the Legislature that a public agency
13 in the process of establishing an assessment program, to the extent
14 feasible, use a good faith effort to provide advance notice of the
15 proposed program to water and electric service providers in the
16 relevant service area, as set forth in Section 5898.24, to allow the
17 most efficient coordination and collaboration between the public
18 agency and water and electric service providers.

19 (e) This chapter shall not be used to finance facilities for parcels
20 which are undergoing development.

21 *(f) It is the intent of the Legislature that participation in an*
22 *assessment program will not result in a property owner being*
23 *unable to pay the property taxes and assessments on the property.*
24 *The Legislature further intends that a property owner should not*
25 *be able to participate in any program established pursuant to this*
26 *chapter if participation would result in the total amount of any*
27 *annual property taxes and assessments exceeding 5 percent of the*
28 *property's appraised market value.*

29 ~~(f)~~

30 (g) This chapter shall not be used to finance the purchase or
31 installation of appliances that are not permanently fixed to
32 residential, commercial, industrial, agricultural, or other real
33 property.

34 ~~(g)~~

35 (h) Assessments may be levied pursuant to this chapter only
36 with the free and willing consent of the owner of each lot or parcel
37 on which an assessment is levied at the time the assessment is
38 levied.

1 ~~SECTION 1.~~

2 *SEC. 2.* Section 5898.20 of the Streets and Highways Code is
3 amended to read:

4 5898.20. (a) (1) The legislative body of any public agency
5 may determine that it would be convenient and advantageous to
6 designate an area within the public agency, which may encompass
7 the entire public agency or a lesser portion, within which authorized
8 public agency officials and property owners may enter into
9 voluntary contractual assessments for public improvements and
10 to make financing arrangements pursuant to this chapter.

11 (2) The legislative body of any public agency may also
12 determine that it would be convenient, advantageous, and in the
13 public interest to designate an area within the public agency, which
14 may encompass the entire public agency or a lesser portion, within
15 which authorized public agency officials and property owners may
16 enter into voluntary contractual assessments to finance the
17 installation of distributed generation renewable energy sources or
18 energy or water efficiency improvements that are permanently
19 fixed to real property pursuant to this chapter.

20 (b) The legislative body shall make these determinations by
21 adopting a resolution indicating its intention to do so. The
22 resolution of intention shall include a statement that the public
23 agency proposes to make voluntary contractual assessment
24 financing available to property owners, shall identify the kinds of
25 public works, distributed generation renewable energy sources, or
26 energy or water efficiency improvements that may be financed,
27 shall describe the boundaries of the area within which voluntary
28 contractual assessments may be entered into, and shall briefly
29 describe the proposed arrangements for financing the program,
30 including a brief description of criteria for determining the
31 creditworthiness of a property owner. The resolution of intention
32 shall state that it is in the public interest to finance the installation
33 of distributed generation renewable energy sources or energy or
34 water efficiency improvements, or both, pursuant to paragraph (2)
35 of subdivision (a), if applicable. The resolution shall state that a
36 public hearing should be held at which interested persons may
37 object to or inquire about the proposed program or any of its
38 particulars, and shall state the time and place of the hearing. The
39 resolution shall direct an appropriate public agency official to
40 prepare a report pursuant to Section 5898.22 and to enter into

1 consultations with the county auditor's office or county controller's
2 office in order to reach agreement on what additional fees, if any,
3 will be charged to the city or county for incorporating the proposed
4 voluntary contractual assessments into the assessments of the
5 general taxes of the city or county on real property.

6 (c) As used in this chapter, each of the following terms shall
7 have the following meaning:

8 (1) "Efficiency improvements" means permanent improvements
9 fixed to residential, commercial, industrial, agricultural, or other
10 real property.

11 (2) "Legislative body" means the governing body of a public
12 agency.

13 (3) (A) For the purpose of financing the installation of water
14 efficiency improvements, "public agency" means a city, county,
15 city and county, municipal utility district, community services
16 district, sanitary district, sanitation district, or water district, as
17 defined in Section 20200 of the Water Code. The definition of
18 "city" in Section 5005 shall not apply to this subparagraph.

19 (B) For the purpose of financing the installation of distributed
20 generation renewable energy sources or energy efficiency
21 improvements, "public agency" means a county, city, city and
22 county, or a municipal utility district, an irrigation district, or public
23 utility district that owns and operates an electric distribution
24 system. The definition of "city" in Section 5005 shall not apply to
25 this subparagraph.

26 (C) For the purpose of financing the public improvements,
27 "public agency" means a city as defined in Section 5005.

28 (4) For the purpose of financing the installation of distributed
29 generation renewable energy sources, "permanently fixed"
30 includes, but is not limited to, systems attached to a residential,
31 commercial, industrial, agricultural, or other real property pursuant
32 to an electricity purchase agreement between the owner of the
33 system and the owner of the assessed property, if the electricity
34 purchase agreement contains all of the following provisions:

35 (A) The attached system is an eligible renewable energy resource
36 pursuant to the California Renewables Portfolio Standard Program
37 (Article 16 (commencing with Section 399.11) of Chapter 2.3 of
38 Part 1 of Division 1 of the Public Utilities Code).

39 (B) The term of the electricity purchase agreement is at least as
40 long as the term of the related assessment contract.

1 (C) The owner of the attached system agrees to install, maintain,
2 and monitor the system for the entire term of the electricity
3 purchase agreement.

4 (D) The owner of the attached system is not permitted to remove
5 the system prior to completion of the term of the contractual
6 assessment lien.

7 (E) After installation, the electricity is purchased by a single
8 payment using the funds from the contractual assessment program.

9 (F) The right to receive the electricity from the system is tied
10 to the ownership of the assessed real property and is required to
11 be automatically transferred with the title to the real property
12 whether the title is transferred by voluntary ~~sale or~~ sale, judicial
13 or nonjudicial foreclosure, or by any other means.

14 ~~(G) The system shall provide electricity to the assessed property~~
15 ~~and to no other property or location.~~

16 ~~(H) The property owner, and all successors in interest to the~~
17 ~~real property, shall not use the electricity generated from the system~~
18 ~~for any location other than the assessed property.~~

19 ~~(I)~~

20 (G) The electricity purchase agreement identifies the public
21 agency that is a party to the assessment contract on the real property
22 as a third-party beneficiary of the electricity purchase agreement
23 until the assessment lien on the property has been fully paid and,
24 only until that time, prohibits amendments to the electricity
25 purchase agreement without the consent of the public agency.

26 ~~(J) The property owner is guaranteed, pursuant to criteria~~
27 ~~adopted by the legislative body of a public agency as required by~~
28 ~~subdivision (d), the electric power from the system.~~

29 ~~(d) The legislative body of the public agency shall establish~~
30 ~~criteria to ensure that a real property owner is guaranteed the~~
31 ~~electricity from a distributed generation renewable energy source~~
32 ~~in the event that the owner of the system files for bankruptcy, to~~
33 ~~the extent permitted by federal law, prior to authorizing public~~
34 ~~agency officials and property owners to enter into voluntary~~
35 ~~contractual assessments for financing the installation of distributed~~
36 ~~generation renewable energy sources attached to a residential,~~
37 ~~commercial, industrial, agricultural, or other real property pursuant~~
38 ~~to a contract that meets the provisions of paragraph (4) of~~
39 ~~subdivision (e).~~

1 ~~(e) The legislative body of the public agency shall make a~~
2 ~~finding that any electricity purchase agreement funded with a~~
3 ~~contractual assessment under this chapter is structured, to the extent~~
4 ~~permitted by federal law, to provide protections to the property~~
5 ~~owner in the event of a bankruptcy of the owner of the system.~~
6 ~~The protections may include, but need not be limited to, the use~~
7 ~~of a special purpose entity or other adequate security as required~~
8 ~~by the legislative body.~~

9 *SEC. 3. Section 5898.22 of the Streets and Highways Code is*
10 *amended to read:*

11 5898.22. The report shall contain all of the following:

12 (a) A map showing the boundaries of the territory within which
13 voluntary contractual assessments are proposed to be offered.

14 (b) A draft contract specifying the terms and conditions that
15 would be agreed to by a property owner within the voluntary
16 contractual assessment area and the public agency.

17 (c) A statement of public agency policies concerning voluntary
18 contractual assessments including all of the following:

19 (1) Identification of types of facilities, distributed generation
20 renewable energy sources, or energy or water efficiency
21 improvements that may be financed through the use of contractual
22 assessments.

23 (2) Identification of a public agency official authorized to enter
24 into voluntary contractual assessments on behalf of the public
25 agency.

26 (3) A maximum aggregate dollar amount of voluntary
27 contractual assessments.

28 (4) A method for setting requests from property owners for
29 financing through voluntary contractual assessments in priority
30 order in the event that requests appear likely to exceed the
31 authorization amount.

32 (5) *A brief description of criteria for determining the*
33 *creditworthiness of a property owner, as well as safeguards that*
34 *will be used to ensure that the total annual property tax and*
35 *assessments on the property will not exceed 5 percent of the market*
36 *value of the property.*

37 (d) A plan for raising a capital amount required to pay for work
38 performed pursuant to voluntary contractual assessments. The plan
39 may include amounts to be advanced by the public agency through
40 funds available to it from any source. The plan may include the

1 sale of a bond or bonds or other financing relationship pursuant
 2 to Section 5898.28. The plan shall include a statement of or method
 3 for determining the interest rate and time period during which
 4 contracting property owners would pay any assessment. The plan
 5 shall provide for any reserve fund or funds. The plan shall provide
 6 for the apportionment of all or any portion of the costs incidental
 7 to financing, administration, and collection of the voluntary
 8 contractual assessment program among the consenting property
 9 owners and the public agency.

10 (e) A report on the results of the consultations with the county
 11 auditor's office or county controller's office concerning the
 12 additional fees, if any, that will be charged to the city or county
 13 for incorporating the proposed voluntary contractual assessments
 14 into the assessments of the general taxes of the city or county on
 15 real property, and a plan for financing the payment of those fees.

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 18 **CORRECTIONS:** _____
 19 **Text—Page 6.**
 20 _____